IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3682 of 2001
With
FIRST APPEAL No. 361 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE H.B.ANTANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

UNITED INDIA INSURANCE CO. LTD & 2 - Appellant(s)
Versus
JAI PRAKASHBHAI C PATEL & 4 - Defendant(s)

==========

Appearance :

MR PV NANAVATI for Appellant(s) : 1 - 3.MR VIBHUTI NANAVATI for Appellant(s) : 1 - 3.MR ARVINDKUMAR SHAH for Appellant(s) : 1 - 3.
RULE SERVED BY DS for Defendant(s) : 1 - 3.
MR HM BHAGAT for Defendant(s) : 4,
MS MEGHA JANI for Defendant(s) : 5,

First Appeal No. 361 of 2001

MR PJ BHATT for MR HARSHAD J SHAH for Appellants
NOTICE SERVED: 1,2,3 & 5
MR PV NANAVATI for Respondent : 4

==========

CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 12/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

Being aggrieved by the judgment and decree passed in Motor Accidents Claims Petition No. 1692/92 dated 31.1.2000 by the Motor Accidents Claims Tribunal (Aux.), Ahmadabad (Rural) at Mirzapur, the aforesaid two appeals have been filed. As both the appeals arise from the same judgment, for the sake of convenience and at the request of the learned advocates appearing for the parties, both the appeals were heard together and are decided by this common judgment.

2. First Appeal No. 3682/01 was initially filed by United India Insurance Co. Ltd. and owners of the vehicle, but subsequently, United India Insurance Co. Ltd. had been transposed as respondent No. 5. Thus, First Appeal No. 3682/01 has been filed by the owners of the vehicle, whereas First Appeal No. 361 of 2001 has been filed by the claimants praying for enhancement of the amount of award. By virtue of the impugned judgment, the Tribunal has awarded compensation of Rs. 2,45,000/- to the claimants.

3. The circumstances in which the aforesaid Motor

Accidents Claims Petition had arisen, in a nutshell, are as under:

3.1 Along with the deceased, the claimants - parents of deceased Sheetal - were traveling in a matador bearing Regn. No. GQE-4796 on 9.6.1992. Around 4.30 a.m. the said matador collided with a truck bearing Regn. No. NS-09-A-6732 near the temple of Lord Shiv, near Gota. Because of the said accident, the matador in which the deceased was travelling turned turtle. The deceased and others suffered injuries and ultimately the deceased succumbed to the injuries.

4. Learned advocate Shri Vibhuti Nanavati has appeared for the appellants in First Appeal No. 3682/01, whereas learned advocate Shri P.J. Bhatt has appeared for the appellants-claimants in First Appeal No. 361/01.

5. Learned advocate Shri Nanavati appearing for the owners of the vehicle in First Appeal No. 3682/01 has fairly submitted that so far as the finding with regard to negligence of the drivers is concerned, he has not to make any submission, but he has challenged validity of the judgment only so far as quantum of compensation awarded by the Tribunal to the claimants is concerned.

6. In the aforesaid circumstances, the facts giving rise to the accident and the details with regard to the negligence of the drivers have not been discussed at all in this judgment, and as the arguments were confined only to the quantum of compensation awarded

by the Tribunal, the relevant details with regard to compensation only have been discussed.

7. Date of birth of deceased Sheetal was 17.3.1971 and a such, as on the date of the accident, she was approximately 21 years old. The claimants – parents of the deceased – had submitted before the Tribunal that the deceased was very good in her studies and extra-curricular activities. They had also submitted that the deceased was earning Rs. 4,000/- per month by doing dress designing work with Varshaben Mukeshbhai and looking to her talent, she would have definitely earned Rs. 7000 to 8000 per month in future and, therefore, calculation of her future income should not be less than Rs. 10,000/- per month. Moreover, they had submitted that she had decided not to marry for ever and looking to the age of the deceased, multiplier of 15 should be applied. Thus, according to the claimants, dependency benefit should have been Rs. 12,60,000.

8. After hearing the learned advocates and upon considering evidence adduced before the Tribunal, the Tribunal awarded Rs. 2,45,000/- alongwith interest @ 12% from the date of the application till realisation of the amount. The Tribunal, while determining the amount of compensation, came to the conclusion that future income of the deceased could have been Rs. 3,750/- per month. After deducting the amount which might have been spent by the deceased for herself, it considered dependency benefit per month at Rs. 1,250/- per month, and applying multiplier of 15, it awarded Rs. 2,25,000/-. In addition to the aforesaid

amount, Rs. 20,000/- were awarded under the head “loss of expectation of life.” Thus, in all, Rs. 2,45,000/- were awarded by way of compensation.

9. Learned advocate Shri Nanavati appearing for the appellants-owners of the vehicle has submitted that the Tribunal has committed an error by adopting multiplier of 15. The said mistake has been committed because, according to the learned advocate, the Tribunal has considered age of the deceased for fixing the multiplier. As per his submission, age of the claimants-appellants should have been considered by the Tribunal for the purpose of determining the amount of compensation, and looking to the age of the claimants, who were around 45 years old at the time of the accident, multiplier should not have been more than 10. It has been, thus, submitted by him that the amount of compensation awarded by the Tribunal is very high.

10. On the other hand, learned advocate Shri P.J. Bhatt appearing for the claimants in First Appeal No. 361/01 has submitted that the Tribunal has committed an error by determining the prospective income of the deceased at Rs. 3,750/- per month. It has been submitted by him that looking to the prospects which the deceased was having, the Tribunal should have estimated prospective income of the deceased at much higher side. According to him, multiplier adopted by the Tribunal is just and proper and, therefore, it should not be disturbed.

11. We have heard the learned advocates and have

also perused the evidence recorded by the Tribunal.

12. It is pertinent to note that though an averment was made in the deposition by the claimants before the Tribunal that the deceased was earning Rs. 4,000/- per month by doing dress designing work for Varshaban Mukeshbhai, no cogent and convincing evidence has been adduced to show that, in fact, she was earning Rs. 4,000/- per month. Looking to the evidence adduced by the claimants, in our opinion, the Tribunal has rightly come to the conclusion that prospective income of the deceased could have been Rs. 3,750/- per month and upon deducting 2/3rd therefrom towards personal expenses, the dependency benefit for the claimants could have been Rs. 1,250/- per month. Looking to the evidence, in our opinion, it cannot be said that the dependency benefit determined by the Tribunal is unjust or improper. We, therefore, do not disturb the said amount. However, in our opinion, the multiplier adopted by the Tribunal is high, possibly because the Tribunal considered age of the deceased rather than age of the claimants.

13. Looking to the law laid down in the case of **United India Insurance Co. Ltd. and others v.Patricia Jean Mahajan and others**, (2002) 6 SCC 281, in our opinion, the multiplier could not have been more than 10. The claimants – father and mother - were around 45 years old at the time of the accident and, therefore, the argument advanced by learned advocate Shri Nanavati for the owners of the vehicles requires to be accepted.

14. There does not appear to be any dispute with regard to the amount awarded under the head 'loss of expectation of life' and, therefore, the said amount as well as the amount of interest awarded by the Tribunal is not disturbed.

15. Thus, it is directed that the multiplier shall be reduced to 10 and, therefore, the amount of total dependency benefit should be treated as Rs. 1,50,000/- and the amount paid under the head 'loss of expectation of life' being Rs. 20,000/-, the total amount of compensation comes to Rs. 1,70,000/- and interest @ 12% as awarded by the Tribunal.

16. In the result, First Appeal No. 3682/01 is allowed to the above extent. There shall be no order as to costs. Decree shall be drawn accordingly. If the insurance company has deposited more amount than what is payable under the decree, the said amount shall be returned to the concerned insurance company.

17. So far as First Appeal No. 361/01, which has been filed by the claimants is concerned, we do not find any substance in the said appeal and, therefore, it is dismissed.

(Anil R. Dave, J.)

(H.B. Antani, J.)

(hn)